Supreme Court, U.S.
FILED

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TERM, 2002

BETTYE L. COUGHLIN & HARRY COUGHLIN , JR.

VS.

STATE OF ALABAMA

PETITION FOR WRIT OF CERTIORARI TO THE ALABAMA COURT OF CRIMINAL APPEALS

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Harry J. Coughlin, Jr., Llb.
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Questions Presented

1. Under both the state and federal constitutions, all defendants are granted the "right to adequate counsel", or as Amendment VI of the constitution, puts it, "...to have the Assistance of Counsel for his defence". In this case Petitioners have been systematically denied counsel. Petitioners did contact the THEN PRESIDENT OF the Birmingham Bar and the referal service and they said, "a lawyer has the right to refuse to represent ANYONE". In this case Petitioner "exausted" the yellow pages and could not run her add in the news papers. She contacted the Birmingham News and the Alanta Constitution. Petitioners did due diligence and was unable to get adequate counsel.

2. Under the 1st Amendment Petitioner have an absolute right to the enjoyment of their property. The county and our neighbors entered into a conspiracy to "frame" us. This conspiracy was futhered by the Alabama Court of Criminal Appeals.

(a) There was "NO NOTICE" given before the arrest. The state produced four witnesses. All four witnesses, swore that, "no one gave Coughlin any notice of anything before the arrest.

(b) The officer that made the arrest, never investigated the matter and had no actual knowledge of the aledged noise, either before or after the arrest.

(c) Petitioner were not give a charge, Petitioner was told, "there is an outstanding warrant for your arrest for disorderly conduct". Disorderly in Alabama is a "vague" charge. The officers , that included the jail personell, could not or would not tell us what the disorderlly conduct was or who had had us arrested.

3. In Alabama , under ***Ex Parte Edwards*, 452 So.2d 503** and others, an arrest for a misdemonor, without probable cause or a valid warrant is presumed to be a "false arrest" on it face. In this case there was NO WARRANT AT THE TIME of the arrest. Under Amendment IV of the constitution, "The right of the people to be secure in their persons...aginst unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be serched, and the persons or things to be seized." In this case as in Mapp and others, there was no warrant and the tale

was made up after the fact. Petitioner has never denied that she owned a small 9 watt radio and played it in her home. It was never turned on before 9 a.m. And off before 9 p.m.. This was not "loud luciduos acid rock music playing 24 hrs. a day for 6 months.

4. Where the law sets out that the jury is selected by the computer, and that computer is shut down on the day of your trial, there is an automatic presumption that the jury is "fixed". There has to be a presumption that the jury process was "tampered with". HOW? Was our jury selected?

5. Where there is already an "established pattern" of "improper contact with the juries" established, in the Jefferson County DA's staff and you, once again, witness signals being passed between the judge, ADA, and jurors, it is a question of proof. The notes that the juror kept and passed is proof. Petitioners were intitled to those notes as proof of the jury tampering. They were the "Best Evidence", we were denied the evidence.

6. It is presumed that the DA will seek to improve his hand on retrial. But ther is suposed to be safegards like the transcripts and records. In this latest case Petitioner were denied the best evidence. We had no transcripts and were not allowed to call Mr Alzarado who was the "only Best Evidence" of what was testified to in the prior case. Amendment VI states, " to have compulsory process for obtaining witnesses in his favor. Petitioner was denied this right.

PARTIES TO PROCEEDINGS

Pertitioers are Bettye L. Coughlin and Harry J. Coughlin, Jr., Defendants in the proceedings and the Alabama Attorney General is Prosecutor/Appellee in this Certiorari. Petitioner feels that they are being "malisously prosecuted by Alabama.

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§15-10-3(a)(6)

OPINIONS BELOW

Petitioners Bettye L. Coughlin and Harry J. Coughlin, Jr, were arrested without warrants on the alleged charge of "outstanding warrants for disorderly conduct". Harry was "ambushed" at the grocery store and Bettye when she went to bail him out. NO ONE at the time of the arrest had a warrant or knew what the "offence" was.

Harry was illegally searched, his vehicle was illegally searched, his vehicle was illegally towed, said vehicle was sprayed with "K9 training spray (urine)" and $20 was stolen from Harry. Bettye was treated similarly when she went to bail him out. NO ONE had a warrant or knew what the alleged offense was. Bettye had stayed home because she had a complaint in with Teresa McDonald (a states witness) over her moving in an "illegal building" in violation of zoning law. Petitioners did not find out what they were arrested for until months later at arraignment.

In this case Petitioners were arraigned by District Judge Cahill. Because we had already filed with the upper court for a change of judge and vinue, we were reassigned District Judge R.O. Huges. But on the day of trial, Kenneth J. Gomany, a lawyer and life partner of Cahill's, impersonated a judge and held "kangaroo court". We were told to sit down and shut our mouths and ""we had not better say anything about these "good christians"". This was not the first time that "gomer" had impersonated a judge. In ***Coughlin v. City of Birmingham,*** 701 So.2d 830 Gomany impersonated a circuit judge and did the same act. Circuit Judge Garrett "upheld" gomers right to violate us. I was denied a jury and a reporter.

Alabama law allows the defendant to have a court reporter in district court, you pay. We paid, but was not allowed our reporter. We, as the law allows, appealed this INTENTIONAL WRONGDOING to the upper courts. Once again we were denied a hearing, the case was reassigned by the Alabama Court of Criminal Appeals for trial de novo. We objected.

The first jury trial resulted in a "mistrial". The juror that the state had sat as a sound expert refused to convict. The trial judge conspired to (a) have Mr. Alvarado removed, (b) he secretly met with the alternate juror, (c) he met with other jurors secretly, and (d) though he tried to replace Alverado he

could not replace the others. It was a mistrial. Petitioner TRIED to get that transcript, and was refused.

On retrial this case was assigned to another "political appointee" with no experience, just like "gomer". And he refused to follow the law and conspired with the jury.

(1) In the first trial (district court) Petitioner were refused a "competent judge", (a) an unbiased judge, (b) an appeal of his misconduct, and (c) a transcript of that trial.

(2) At the second trial (circuit court jury) Petitioner was refused a fair trial, (a) Judge tampered with jury, (b) notes were passed, (c) meetings held, (d) Alzarado was removed, (e) we were refused the transcript.

(3) Third trial was completely different from first two trials, (a) Petitioners were refused the best evidence, transcripts, (b) refused to allow any testimony about the other two cases, (c) refused to call or allow us to call Alzarado (the Best Evidence) to rebut the states witnesses, (d) jury was told that these witnesses were "protected" and "good christians doing their duty". We were convicted and appealed.

On the 3/1/02 the Alabama Court of Criminal Appeals issued it's **MEMORANDUM**. In the decision they intentionally lied about the facts of this case, in order to reach their decision. This is not the only time this Court has done this. See ***Coughlin v. City of Birmingham,*** 701 So.2d 830 and ***Coughlin v. State***, 442 So.2d 104. Petitioner has included a copy of the decision as a1 - a6. Petitioners applied for a rehearing based upon the errors contained in the decision. That was denied and the Petitioner applied for a Writ of Certiorari to the Alabama Supreme Court and that was denied on 5/17/02. Being that that exhausted the state appeals Petitioner applies to this Court for a Writ of Certiorari to the State of Alabama.

JURISDICTION

Petitioner invokes the 1st, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 13th, and 14th Amendments of the Constitution. In this case

Petitioner Bettye was enjoying her right to play music in her home, in a reasonable manner, from 9 a.m. to 9 p.m.. Harry did not own the radio and did not play any music. Petitioners neighbors got together with the "religious public officals" and conspired to frame us. We have been denied our rights and the conspiracy has continued. We have repeatedly been arrested on misdemeanors without warrant and no probable cause. We have been repeatedly denied reasonable bail and bond. We have been repeatedly denied due process in arrest and rearrest. We have been denied both "Best Evidence" and the right to call witnesses. And our juries have been fixed. In Petitioners Arguments we shall take-up the intentional lie that the Decision is based upon.

ARGUMENTS

I. The Appeals Court intentionally erred in argument III of its decision, on both the facts and the case law. This is the quote from the decision.

"The evidence, which was presented primarily in the form of a series of neighbors testifying, showed the Coughlins played loud music 24 hours a day, 7 days a week, for approximately 6-8 weeks. This barrage continued despite the complaints of the neighbors. There was some testimony that, in response to the complaints, the Coughlins intentionally turned their speakers to face a particular neighbor when that neighbor was out in his or her yard. This certainly is sufficient evidence that the Coughlins were guilty of disorderly conduct, and their arguments are without merit, **See, e.g., Sterling v. State, 701 So.2d 71, 74** (Ala. Crim. App. 1997)."

The decision states, "...This barrage continued despite the complaints of the neighbors...." The actual testimony DOES NOT AGREE WITH THIS STATEMENT.

Willians testified in Volume 2, [page 255 &256, of the Transcript], to the following on direct examination;

Q. Eventually did you call the police?

A. No. That --when I went down that Wednesday night. I went to the Substation and asked the officers at

that time would they go up to the Coughlin's and have them turn that music down. And they said they could not go up there without two officers and a supervisor, and I would have to file a complaint, that was the only way they would turn the music down.

Q. Did you eventually file a complaint?

A. Yes, ma'am, that next morning, because the music was still playing.

Q. What happened at that time when you made your complaint, was it made in your house?

A. No. I made it when I went down there and talked to them about it. They gave me -- I made out the complaint with the officer. A then I went down, he told me where to go and I went down and talked to that lady, and she said we will take care of it.

Futher, on page 261 Williams testified that;

A.....But you can't do that here (notice?) Because you can't -- there is no trespassing signs and you can't speak to them and you are always in fear of being sued or the police coming up and harassing you.....

As to the other witnesses we quote Ms. McDonalds testimony we quote from page 38 Volume 3 of the transcript;

Q. Okay. Ms McDonald, at the time -- now, you said you filed an incident report?

A. I called the police, yes.

Q. Did you file an incident report?

A. I don't know if they filed one or not.

Q. Well, did you ever notify us that the noise, and everything, was annoying?

A. No.

Bencko's testimony is the same, and Jones testified the same way, **There was no notice given** and no warrant issued at the time of this arrest.

This Court has established the "Fair Notice Doctrine", ***Blanco v. State, 761 S.W.2d 38,*** establishes the doctrine. "[5} In addition to free speach protections, the State's police power to protect the quite is futher limited by requiring "fair notice" that the contemplated conduct is prohibited by statue, ***Papachristou v. City of Jacksonville, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110,***" and futher; "[7-9] The appellant correctly points out that vague laws offend the Constitution by allowing arbitary and discriminatory enforcement, by failing to provide fair freedoms warning, and by inhibiting the exercise of First Amendment, ***Grayned v. City of Rockford, 408 U.S. 104, 33 L.Ed.2d 722.*** In fact the case that the Appeals Court quotes, ***Sterling v. State, 701 So.2d 71***, states that without notice, this would be, "enforcement according to the "'malice or animosity of a cantankerous neighbor'"...See ***Bakolas*** at 486, 449 N.E.2d 740 and cases cited therein".

In this case every witness including the arresting officer stated for a fact that NO NOTICE WAS EVER GIVEN. Not verbally, not in writing, NOTHING. There was no "barrage of complaints". Petitioner Bettye was trying to make the county apply the zoning law and, "it was turned back on us". The law as applied is "unconstitutionally vague" and has to be "struck down".

II. As to the arrest without warrant for a misdemeanor, there are 2 parts to the Argument; [1] Under both Constitutions Petitioners are guaranteed that, and I quote from Amendment IV, "The right of the people to secure in their persons....from unreasonable searches and seizures, shall not be violated, and no Warrant shall issue , but upon probable cause, supported by Oath or affirmation, and particularly describing ....". In this case as in ***Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed2d 1081*** no warrant was obtained at the time of the seizure of the Coughlins persons. Petitioners have no doubt that the State can fabricate a warrant "after-the-fact". The question is did a warrant actually exist at the time of the arrest. The answer to that question is no. Green did not quote a charge, in fact Green admitted he had "no actual knowledge of any of the alleged incidents. Under these conditions, at best, Green made the arrest on the word of another. Green did not say, "if you get me a warrant I will arrest Coughlin", instead he said, "I'll go arrest Coughlin now and you go get me a warrant". Any warrant obtained under those conditions would be "conspiracy" and

invoke ***Wong Sun v. U.S., 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed2d 441***.

The [2nd] part of the argument is *Ex parte Edwards, 452 So.2d 503.* It states; "[1] We note at the outset that the attempted arrest of petitioner by Officer Booth was an illegal arrest. A warrantless arrest may be made under any of the following circumstances.

"An officer may arrest any person without warrant, on any day at any time for:

(1) Any public offense committed or a breach of the peace threatened in his presence;

(2) When a felony has been committed and he has reasonable cause to believe that the person arrested has committed it;

But the court did not stop there they defined it futher, "An officer may execute a warrant of arrest on any day and at any time; but in doing so, he must inform the defendant of his authority and, if requested, must show the warrant." Just as in Mapp he must have the warrant, it must state with **particulars** what you have done. In this case there was no charge other than, "an outstanding warrant for disorderly conduct'. What is "disorderly conduct in Alabama; "anyrthing the arresting officer says it is".

This arrest is totally unconstitutional and aginst all precepts of law and order. As this officer has stated on other occasions, "I'll damn well arrest you now, by god, and that damn magistrate will have to uphold me." That is conspiracy to violate, and when the magistrate illegally issues, as in this case, that back dated warrant, it is a futher, "conspiracy".

III. According to the Constitution we have the right to, (1) counsel, (2) court reporters, (3) cross-examination, (4)discovery, and compulsory service. In this case we were denied all of this. First we were arraigned by District Judge Cahill, who because of our motions had recused himself. We were told it would be assigned to District Judge R.O. Huges. But, on the day of trial Kenneth J. Gomany, AKA Gomer was there. When asked who he was, his answer was, "I've got enough power to lock your butt up! Just as in ***Coughlin v. B'ham, 701 So.2d 830***, Gomany impersonated a judge. That time he impersonated a circuit judge this time he impersonated a district judge. We objected and were told to sit down shut up and

he'd jail us if we said anything about these "good christian neighbors". We were denied our reporter. We were denied the right to appeal to the upper court. The Alabama Court of Criminal made us appeal on trial de novo. Once again we were denied "due process". Gomany is only a lawyer and District Judge Cahills life partner.

At the second trial Judge Brown actively communicated with the jurors and sought to have Juror Alverado removed, the states sound expert. Brown had the alternate, who had been released, brought in and "hidden". But as we pointed out that's juror 13 where was he going to get 14. That was a mistrial. We tried to get that transcript and were refused.

Circuit Judge Litenstine is a political appointee, and incompetent. First we objected to the makeup of the jury. Then jurors we had struck were seated. Then we found out that the computer in Montgomery (state capitol) was shut down, and when we asked, "if the computer is shut down, who picked the jury". Then notes started being passed. Jefferson County has a "noted" habit of "inappropriate contact with jurors".

It is assumed that the DA will try to improve his hand. If there is no record there is no way to challenge the states case. We were denied both a fair trial and transcript in the first case. We appealed because we were denied due process. In the second case we were denied the transcript.

But in the third case we were denied even Mr. Alverado, the juror in the second case, who had become the "Best Evidence" of what had been testified to in the last court. Petitioners futher tried to prove that there were "communications" by requesting the jury notepads that the judge had given them. We were refused. At every stage we have been conspired aginst. We were denied the witness, the transcripts, and the actual evidence of jury tampering.

IV. By Alabama law, in selecting a jury, the hat was done away with and the computer was installed. If the computer was not running on the day of our trial, "who picked the jury". In the old way Petitioner were guarinteeded a "ramdom selection" of the potential jurors. Under this system the "computer" in Montgomery (state capitol) is susposed to guarantee that "ramdom" selection. On the day of our trial the states computer was closed down and Jefferson County had not informed them that they would be open. Petitioners contend that there is an "automatic unrequitable presumption" that the fury we got was "fixed".

V. Petitioner was denied "assistance of counsel". At the time Petitioner Bettye wrote Mr. Samples, he was the President of the Birmingham Bar Association. The Bar has refused to provide us with a referral. They say, "A lawyer has to make a living, they have a right to chose who they represent, and if they represented you they would lose their lively hood". We have exhausted the "Yellow Pages" and some of the lawyer have gone so far as to tell us that they have been physically threatened by the "county". Petitioners have even tried to advertise for a lawyer in the Birmingham News and Atlanta Constitution, both newspapers refused to allow us to run a classified add. Petitioners have not waived, they have been denied "assistance of counsel". This is not a question of money, we have offered to pay, it is a question of the BAR being closed. Petitioner have been forced to defend themselves.

Petitioner in part relie on Judge Baschab's dessenting opinion contained in the Appendix as pages a5 & a6. A lawyer in Alabama is one of those things that money can't buy.

VI. On one hand the Appeals Court criticizes that we filed too much paper work [see foot notes to decision] and the next they are saying we waived. Petitioners have never waived any of our rights. We have filed the "proper writs" we have proven over and over, just as in ***Coughlin v. B'ham***, that it is impossible to receive a fair trial in Jefferson County.

As this Court is well aware we are forced to request a jury trial, because if we didn't we would have no record to appeal on. As it is the reporters refuse to give an accurate transcript and the paper that is filed is the "only evidence" that you objected, **See Coughlin v. B'han, 701 So.2d 830.**

Defendants are at a distinctive disadvantage in to begin with. We are forced to pick the "least objectionable jury". You are presumed guilty because they are told that you appealed trial de novo. Then the judge explains that the witnesses are under the courts protection, and he praises the witnesses for doing their "good christian duty" and "helping the police". These people think that they are "helping" the judge. Couple that to the fact that you have at least one ringer (that juror that you struck and got seated) and there is no way to receive a "fair trial" in Jefferson County. All this is in the record on appeal.

VII. AS TO the huge speakers, Petitioner, once again state, that what the state alleges the state must prove. Williams testified that they were (pg. 282, Vol. 4) "...these round-looking speakers...". But Jones, testified (pg. 324, Vol. 4)

A. The speakers, well, probably both -- each one of them was about this wide and stood up about this tall (indicating).

Q. How many speakers did you see?

A. I only saw two speakers.

Q. And did you see anything connected to those speakers?

A. Yes, ma'am, I did. There was a stereo system....

In this case the state alleged that these were huge speakers and Regina Jones (William's wife?) Offered pictures of our carport. THESE PICTURES DID NOT SHOW ANY HUGE SPEAKERS. Other that testimony after the fact there is no "actual proof" that these "huge speakers" ever existed, in other that their imaginations, just like the warrant. Even Charles and Regina could not agree as to what, how big or what shape the "huge speakers" were. This, according to the neighbors, went on constantly for 6-8 months and THE ONLY PICTURES THE STATE CAN PRODUCE SHOWS NO "HUGE SPEAKERS". What the State alleges they must prove.

CONCLUSION

Petitioner were wrongfully convicted. According to the opinion of the Appeals Court there was a "barrage of complaints". There were no complaints till after Petitioners were arrested with no probable cause and no warrant. That is not the only arrest that these neighbor and police have fabricated. **See Coughlin v. B'han, 701 So.2d 830 and Coughlin v. State, 442 So.2d 104.** These false arrests in fact originate from the appeals court.

Petitioners were intentionally NOT GIVEN ANY WARNING. No Warrant was issued and no warrant was ever served. No warrant was produced until this record was compiled for the third trial. And what is in there now was "fabricated by Judge Litenstine and the ADA". Petitioner has no doubt that the Judge can fabricate a warrant after the fact, but that is what it is, "conspiracy to commit". But each time we come back to the actual facts. "There was no huge speaker, there were no complaints, there was no notice, there was no warning, there was no intent on the Coughlins part. Harry had no radio and his mother only had a 9 watt radio that she played

(sometimes) in her home, from 9 a.m. to 9 p.m., some days. As Williams said again, "I'd had enough and I had them arrested" and as Deputy Green had said, " if I arrest you they'll have to uphold the arrest". That is what happened. We were "legally" protesting McDonald moving in an illegal "portable building", and they got together and "turned it back on us".

This Decission has to be reversed because it is based upon an outright lie. There was no "barrage of complaints **about the radio**". We draw the Courts attention to the fact, "about the radio". Yes, the neighbor got together and drew up petitions to have us arrested. For what, "anything they could". This case is an outright "fabrication". There was no loud, ludicrous acid rock music playing 24 hrs. a day for 6-8 months. The testimony that Litenstine and the ADA made up was totally different from the other trials, and Petitioner could have proven it if he had been allowed to have the transcripts or call Mr. Alverado the 12th juror. Petitioners are only asking that they be granted what ever citizen is guaranteed by the Constitution. The right to a fair and speedy trial, before a jury of our peers, and the right to have the "Best Evidence" and assistance of counsel. As this case shows "disorderly conduct" is now being abused. For this reason the Court must reverse and declare this section of the statue "Void for Vague".

Futher, though Alabama has the law on misdemeanors defined, she refuses to enforce it. As it now stands, these types of "vigilante" arrests are common. They are local law enforeement's way of "helping the good christians get back the control of their neighborhoods". Though Petitioner now has over 50 Alabama Uniform Incident Reports generated by the DA, the Sheriff and these "good christian neighbors" , they all have one thing in common. Each one says, "magistrate refused to issue warrant, said it was a CIVIL MATTER". That is why Deputy Green took matters into his own hands and made (Ex parte Edwards) the intentional false arrest. "To quote Green, "If I do it they willl have to uphold it". That is what they have continued to do. For this reason the Court has to reestablish the issuing of warrants, the service of warrant, the process of bond, and notice of what you are charged with. As it now stands you are arrested without warrant, made to come up with "spot cash", not give a charge or court date and given a telephone number to call. On the piece of paper with that number is the statement, "YOU WILL NOT BE GIVEN NOTICE". Calling that number does not guarantee that you will be notified. District Judge Cahill

has acknowledge three times that the clerk has issued "wrongful alias warrants" on which we have been jailed. The law is not being followed.

Petitioners are representing themselves from necessity not because they want to. Petitioners have made all the reasonable search they could. Both the Justice Dept. and the FBI are aware of the situation as relates to the BAR in Alabama being closed to non christians. So far they have refused to act.

For these reasons the Writ should issue.

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